

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JANEDA ROSSI,

Plaintiff,

vs.

VERIZON COMMUNICATIONS, INC.,

Defendant.

No. 1:21-cv- 11389

DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Verizon Communications, Inc. (“Verizon”) submits this Motion to Dismiss the Complaint of Plaintiff Janeda Rossi. In this action, Ms. Rossi asserts that she lacked the mental capacity to understand the Verizon Pension Agreement that she signed on or about June 30, 2017, under which she elected to receive her pension benefits in a lump sum amount of \$329,452.68. Accordingly, in the first, unnumbered Count of her Complaint, Ms. Rossi seeks to have her Pension Agreement declared void and unenforceable. In Count II of her Complaint, she alleges that Verizon’s act of sending her the Pension Agreement forms while she was hospitalized breached the implied covenant of good faith and fair dealing.

As Verizon details in its accompanying Memorandum of Law, Ms. Rossi’s Complaint is not viable for at least four dispositive reasons: (1) her lawsuit and the damages she seeks are preempted by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, *et seq.*; (2) her claims are time-barred by the three-year statute of limitations prescribed by ERISA, 29 U.S.C. § 1113; (3) the terms of the Pension Agreement and the documents she signed

in connection with that Agreement show that she entered it knowingly and voluntarily; and (4) Ms. Rossi ratified her Pension Agreement by not promptly revoking it, and instead, accepting and keeping its substantial payout (over \$329,000). Consequently, Ms. Rossi's Complaint should be dismissed with prejudice.

Wherefore, Verizon respectfully requests that Ms. Rossi's Complaint be dismissed with prejudice.

Dated: September 24, 2021

McELROY, DEUTSCH,
MULVANEY & CARPENTER, LLP
Attorneys for Defendant
Verizon Communications Inc.

/s/ David P. Russman

David P. Russman BBO 567796
McElroy, Deutsch, Mulvaney & Carpenter, LLP
Ten Post Office Square
8th Floor, Suite 800S
Boston, MA 02109
t. (617) 748-5500
f. 617-748-5555
drussman@mdmc-law.com

Local Rule 7.1 Certification

I, David Russman, certify that on September 14, 2021, I conferred with Ms. Rossi's counsel in an attempt to resolve or narrow the issues presented. The conference was unsuccessful.

/s/ David Russman

David Russman, Esq.

CERTIFICATE OF SERVICE

I, David P. Russman, hereby certify that on this 24th day of September, 2021, I served a true and accurate copy of the foregoing through the Court's Electronic Filing System and by emailing to:

Joe Franzese, Esq.
Franzese & Franzese, PC
152 The Lynnway, Suite 3B
Seaport Landing
Lynn, MA 01902
Joefran7@yahoo.com

/s/ David P. Russman

David P. Russman